

**GENDER FOETICIDE: EXPLORING BEYOND MEDICAL ETHICS.**  
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Foetal foeticide based on gender selection has posed a major problem for doctors, society, government and religious institutions in the Punjab and other regions of North India. In 2001 the highest seat of Sikhs, the Akal Takht at the Harmandar Sahib, announced an edict forbidding any termination of pregnancy based on gender selection. The Indian State has passed legislation to deal with it, Activist groups have tried hard to stop foeticide., but it continues with Punjab having almost the largest number of ultra sound facilities in India per 1000 population. The 0-6 years old female to male ratio has steadily fallen in the Punjab and stands at 793: 1000 in 2001 against the national ratio of 927: 1000 female to male ration. In 1991 this ration was 875: 1000 in Punjab<sup>i</sup>. No one quite knows how this will be reversed. It poses some considerable questions about the ethics related to medical opportunities and whether they should be freely available. It also requires a multi-discipline approach that sees the problem as wider than the scope of medical ethics and brings in various civil society actors in a coordinated approach..

**DETERMINING FOETAL GENDER**

Ultra sound scanning and amniocentesis were introduced as part of medical diagnostics to diagnose foetal abnormalities. Amniocentesis is an invasive technique, requiring a sample of amniotic fluid from the womb. It is usually informative at 16 – 18 weeks of pregnancy when it is safer to draw out amniotic fluid. Foetal cells from this fluid give important Chromosomal information. It can also give information about gender of foetus.

Ultra sound scanning is a non invasive technique. It gives information about foetal development and can give useful information about some forms of abnormalities. However at 15 weeks, it can also give information about gender..

Ultrasound equipment costs some 5-20,00,000 rupees ( 11-45,000 US Dollars). There is a considerable demand for it in India. In fact even small towns have a private ultrasound facility. People access these facilities for gender determination of the child. The law requires that the sonographer does not reveal the gender of the child. However the official report of the sonographer does not need to reveal the gender. It could simply say that the foetus is normal while the sonographer can verbally advise the parent.

**GENDER SELECTION ABORTION**

Once people find the foetus is a female, the next step some take is abortion. Abortion for gender selection is against the law in India. However, the mother can pretend that she does not know the gender of the foetus and demand abortion on any of the other criteria<sup>ii</sup>. Even if the doctor is privy to the real reason for the abortion, the doctor can claim not to have known the reason for the abortion.

**THE LAW**

The first law relating to abortion was passed in 1971 as Medical Termination of Pregnancy. Prior to this abortion was illegal in India and abortions were carried out by back street clinics or quacks. The law was brought in to give legislative form to increasing liberalism in Indian society. However the number of gender selective abortions led to a rethink and introduction of the Pre natal Diagnostic Techniques Act in 1994. This was followed by the Preconception and Prenatal Diagnostic Technique (prohibition of sex selection acts) Act 2003 in 2003.

The main features of these laws are:

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are of opinion, formed in good faith, that-

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

In the Pre natal Diagnostic act 1994, the following is significant.

### **Determination of sex prohibited in an amendment in 2003 and act changed to pre conception and pre natal ...**

On and from the commencement of this Act,-

(a) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus;

(b) no person shall conduct or cause to be conducted any prenatal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus.

It added in vitro sex determination as banned in the list in 2003..

### **CULTURAL ISSUES**

The reasons behind the high gender based abortion rate is the desire for a male offspring and the dowry. Despite legal attempts to outlaw dowry, the practice has increased in Indian society. Traditionally dowry was practiced in upper castes. However with increasing economic change in all sections of Indian society, dowry became emulated among all castes. Dowry is now endemic in Indian society and given to the groom when a daughter is married. It is a significant economic burden upon the family. Moreover

daughters leave the family home and therefore form a net financial burden upon the Indian family system. Indian society has not found an economic or significant cultural value for girls within the family except when they come in as daughters in laws. Rigid societies such as Indian culture can be extremely cold in decision such as foetal foeticide.

Around 60 years ago, infanticide of newborn female infants was not uncommon in Punjab. This practice began to come down significantly when religions and state made it an unsocial crime. The Sikh religious hierarchy condemned such practice and its ban was written into the Sikh code of conduct. Killing of newborn infants was treated as a murder<sup>iii</sup>.

However since a loophole in law has emerged through abortion as a legal right, female foeticide has come back into society. The market has simply responded to the demand.

## **DISCUSSION**

The issues around this subject involve several different aspects.

1. The role of medical fraternity
2. The role of para medical services
3. the role of law
4. The role of law enforcement agencies
5. The role of state
6. the role of religious institutions
7. the role of NGOs

### **The role of the Medical Profession**

The role of the medical fraternity is the most obvious yet it continues to be the most difficult to regulate. A doctor is required to obey the law and to follow guidelines that are based on moral responsibilities. A doctor is not supposed to abort a foetus simply on grounds of wrong sex.

However many doctors have continued with these practices despite moral and legal constraints. There is a lucrative market. A doctor is considered to get 250-500 rupees from the centres for every illegal scan. Abortions cost between 3000- 5000 rupees. Many abortions are done in unhygienic places where the incidence of infection is high. Doctors feign ignorance about gender reason for an abortion.

It now requires the Indian medical fraternity to start pointing fingers at such doctors. However the Indian medical fraternity does not have a reputation for taking quick and difficult decisions on professional misconduct. In the United Kingdom, the government has introduced a culture of constant revalidation by colleagues and a willingness by colleagues to point out concerns about serious misconduct. Public pressure and a vigilant press has added to this. Perhaps there is a need for a similar system to be introduced in some disciplines of medicine such as obstetrics and gynaecology.

### **The role of paramedical and diagnostic services.**

The role of ultrasound clinics has greatly increased the incident of foetal foeticide. Can these services be brought under some scrutiny given that the law and the law enforcement services have failed. In a country such as India, the level of corruption makes most regulatory practices unworkable, unless public scrutiny is significant.

The guidelines for registration of ultrasound facilities, the duties and obligations of those working there or in genetic laboratories prohibits anyone connected to associate or help in carrying out detection or disclosure of sex of the foetus in any manner. Every single detail of the pregnant woman has to be recorded. Yet foetal gender determination carries on remorselessly.

Perhaps there is an argument to control the market in some aspects of economy. And the number of ultrasound machines have to be regulated by statistical indicators other than demand and price. For instance the state could put a limit to numbers of purchase and sales of ultrasound machines. Since they are largely used to determine foetus gender rather than other medical diagnosis in India, the number of machines can be related to the ratio of female ;male births in a region. According to L Chitty, University College, London, (2000) there is no indication for routine ultrasound scanning and can be reduced on a indication basis.

Regulatory bodies can cope with a small number of machines as public accountability increases. This may be against the free market economy that India has adopted. However, the restriction for controlling the market has national and moral reasons rather than political or economical reasons.

### **The role of the Law**

The law has unfortunately enabled gender abortion. However the balance between rights based on liberal values and the need to narrow access to abortion is a fine one. The law cannot go back to the pre abortion days. Moreover, in societies such as India, the law is not the sole solution. It merely enables society to take action against a social problem. It is up to the state and society to implement the law.

India tends to resort to introducing legislation as a first measure to deal with a problem. However society then remains frustrated at the non implementation of the law. The law has to be complimented with other social institutions or preceded by mass campaigns.

### **The role of law enforcement institutions.**

In the field of violence against women and dowry deaths, law enforcement agencies eventually resorted to setting up special cells in cities such as Chandigarh which were specialised to deal with infringements. The plan seems to have worked to some extent.

A fall in the female:male ration could lead to significant problems for India in the future. It will create a crises in population growth. However it could also increase issues of law and order as there will be more single young men with little prospect of marriage.

The State has to see this problem as a serious State issue if it wants to deal with the foetal foeticide problem other than in a moral context. If the State considered this to be a serious future problem, then it will have to set aside resources to deal with it. It would appear that the State sees female foeticide as a moral issue and some have cynically suggested that it sees a possible population reduction in the future. However the consequences of a surplus number of single young men does not seem to have been thought through.

In Punjab, Law enforcement agencies need to set up foetal foeticide units.. It would be difficult to make this work if it is linked to gender violence units as the complicity of women in foetal foeticide is a primary cause for the problem. The gender violence units depend on the victim reporting to the crime unit and then a raft of legal provisions have made it easier as well as simpler for conviction.

A foetal foeticide unit needs to work differently as the victim is neither the pregnant mother, nor the ultrasound unit. The victim is the foetus, society and the State. Consequently the 'awareness' of the crime has to be accordingly adjusted.

### **The role of the State**

The State in India is set in its working methods. It rarely works as a multi-disciplined unit. It also fails to bring in various institutional powers in society into state led action. Clearly the State alone cannot function in dealing with problems in society that are rooted in cultural mores and compulsions.

To deal with the ethical dimension of foetal foeticide, the State needs to bring in religious institutions, law enforcement agencies, NGO's, the medical profession and politicians to work with common responsibility on this problem.

Currently the enforcement authority on gender foeticide consists of a Joint Director of Health and Family Welfare as the Chairperson, an independent woman representing women's organisations and an officer of the Law Department of the State Government concerned. However there needs to be a wider involvement of civil society, particularly religious and cultural representative groups.

This has been tried in society orientated issues in the UK. For instance, following the London bombings, the government embarked on a wide consultation exercise with religious communities and has set up a multi discipline task force which ranges from Police officers to community leaders and religious institutions as well as NGOs. The foetal foeticide issue cannot be seen simply as a medical ethics issue, but an issue arising from medical ethics to a wider responsibility.

### **The role of religious institutions**

Religion plays a significant role in the lives of people in Indian society. However the institutions are rarely brought into solving problems. Instead they have frequently been exploited for political gain.

The edict by the Akal Takht Sahib in this case is significant. However the Akal Takht has no legal enforcement power nor does it have institutional framework to deal with a problem such as a major campaign within society.

Ideally the state should have responded to the edict by bringing in the Akal Takht to assist in the coordination of a public campaign. However, in the paradoxes of Indian statecraft, while politicians willingly exploit religious leaders, the State tends to maintain a rigid secular approach. A change in this could significantly help in dealing with social and cultural problems that have a cultural root.

The Akal Takht cannot set about a mass campaign itself, it has to work through the statutory body the Shiromani Gurdwara Parbhandik Committee (SGPC) which has vast resources at its disposal. The SGPC has shown little inclination to give life to the edict although it has the infrastructure to do so.

### **The role of NGOs**

NGOs in Indian society generally tend to be middle class based organisation with a secular orientation. As a result they rarely work with religious institutions and do not generally incorporate the wider civil society in their work. There remains a considerable gap with activist NGOs and society. They tend to lobby the government for legislation and implementation. This has not worked for dowry and is unlikely to work for foeticide..

NGOs need to put aside their political alignment to secularism and have to work closely with religious institutions. In many other fields of welfare work, religious figures and NGOs working together have made a significant difference.

### **CONCLUSION**

Foetal foeticide is not merely a medical ethical issue. It has significant ramifications for society now and in the future. The female:male ration has already fallen. This may have an unintended benefit for women as it could reverse dowry giving from male to female as the shortage of marriageable female partners becomes evident in a decade. However the imbalance could also cause unrest and civil disturbances in a country with an increase in the number of single young men. Their energies seek outlet in violence or related activities. It could also increase diseases such as AIDS as prostitution will increase.

Traditional approaches such as enactment of the law and hoping for the medical profession to regulate its members' action is unlikely to work. There needs to be a multi faceted and multi-disciplined action led by the State. .

The State has to recognise the problem and encourage various institutions to work together to deal with foetal foeticide. The law enforcement agencies need to set up a special unit, the State needs to work with religious and other civil society representatives to campaign within society. There is also an argument to restrict the number of ultra sound scanners and relate sales to statistics on female:male ratios. This problem is cannot simply be categorised as a medical ethics. It requires recognition as a major problem..

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<sup>i</sup> Census of India 2001

<sup>ii</sup> S G Kabra , Indian Journal of Medical Ethics, Gender Disparity: need to look beyond 'female foeticide'

<sup>iii</sup> Sikh Rehat Maryada, SGPC